

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Of Ronald Brasher, Patricia
Brasher, and DLB Enterprises, Inc. dba
Metroplex Two-Way Radio Service

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EB Docket No. 00-156

Before: The Commission

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EXCEPTIONS
OF RONALD BRASHER

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Submitted September 8, 2003

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Summary/Statement Of The Case/Questions of Law

Statement of the Case: Defendants contend that the Court's Decision is contrary to the dictates of 5 U.S.C. §556(c) and standards of proof articulated in *In the Matter of TeleSTAR, Inc* 2 FCC Rcd. 5, at ¶ 23 (1995) and the burden of proof which the Court properly assigned to the Bureau, yet the Bureau did not meet. Rather, the Decision is based on facts contradicted within the record, which contradiction was provided no decisional weight, and the Court's acceptance of total veracity of that testimony provided by opposing witnesses, which veracity is not found in the record evidence. Therefore, based on a preponderance of all evidence contained in the record, the Court could not have reasonably found Defendants culpable. Accordingly, the Decision should be reversed on review.

Questions of Law Presented: The specific questions of law are, for the Commission's convenience and reference, articulated in the titled sections and subsections of the brief. However, the general questions of law are as follows. Whether the Court erred in its finding of improper specific intent in the actions taken by Defendants, absent evidence of Defendants' knowledge that their actions were, perhaps, not in strict accord with the agency's rules; and whether the Court erred in failing to give weight to any material evidence which contradicted the conclusions put forth by the Bureau; and whether the Court erred in holding that the actions taken by Defendants warrant revocation and disqualification. Defendants claim that the Court did so err and that such error is material and subject to the Commission's reversal on review.

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In the Matter Of Ronald Brasher, Patricia)	EB Docket No. 00-156
Brasher, and DLB Enterprises, Inc. dba)	
Metroplex Two-Way Radio Service)	

Before: The Commission

EXCEPTIONS

1. In accord with 47 C.F.R. § 1.276, Ron Brasher, a minority shareholder in DLB Enterprises, Inc., dba Metroplex Two-Way Radio Service (“DLB”) hereby submits exceptions to those findings published in the Initial Decision of Administrative Law Judge Arthur I. Steinberg, *In the Matter of Ron Brasher, et al* , EB Docket No. 00-156 (Released August 8, 2003) (“Decision”), which Decision arose out of a hearing before Judge Steinberg pursuant to *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity For Hearing*, EB Docket No. 00-156, 15 FCC Rcd 16,326 (Released August 29, 2000) (“HDO”), which hearing occurred between February 26 and March 9, 2001.

2. The HDO and the Decision presented six issues for determination by the Court pursuant to hearing, assigning to the Bureau in accord with 47 U.S.C. § 312(d) and 47 C.F.R. §1.91(d) the burden of introducing evidence and establishing sufficient proof to establish the first five issues related to existing, licensed facilities; whereas the HDO and Decision assign the burden of proof to the Parties on the sixth issue, related to applications pending before the Commission.

(Decision at ¶ 1)

3. The Parties respectfully direct the Commission’s attention to 5 U.S.C. § 556(c), which requires that a sanction may not be imposed.. except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable,

I. Misrepresentations And Lack of Candor: Issue (a): Whether the Court erroneously found that Brasher had engaged in misrepresentation and/or lack of candor before the Commission.

5. The Court concluded that, “[t]he findings of fact establish, and it concluded, that Ron Brasher made multiple misrepresentations of fact to, and concealed material information from, the Commission in applications he filed with the Commission in the names of others.” Decision at ¶ 111, and that “Patricia Brasher was complicit in the misrepresentations made by Ron.” *Id.* The Parties dispute this finding and request that, upon review, the Commission reverse the Court’s conclusion.

(A). Whether the Court improperly ignored the pro se status of the Brashers.

6. It is undisputed that Ron and Patricia Brasher were acting *pro se* in their operation of DLB Enterprises, Inc. and in their assistance in the preparation of the subject applications.¹ The Court gave no weight to this fact, although it is apparent that the actions taken by the Brashers were largely explainable due to ignorance of Commission rule, policy and procedure. That the Court did not consider this material status of the Brashers and apply that undisputed attribute to their actions is apparent. However, to establish the intent requisite to a finding of misrepresentation, the Bureau must have presented evidence that the Brashers were engaged in something other than mere mistake, borne of ignorance. The Bureau must have shown that the Brashers intended fully to engage in a violation of the Commission’s Rules.

7. Additionally, for the Bureau to have submitted evidence sufficient to establish its allegation of lack of candor, the Bureau would need to show that the Brashers intentionally withheld material facts from the Commission which the Brashers knew were required to be placed before

¹ Although the Brashers did employ the services of John Black, a licensing consultant, the Parties were not represented by telecommunications counsel in their actions.

the Commission. Accordingly, the knowledge and capacity of the Brashers is paramount to establishing the requisite intent to deceive the Commission.

8. What is totally lacking in the Bureau's evidence and as a necessary basis for the Court's conclusion is evidence which supports a specific intent to deceive the Commission in the preparation and filing of the subject applications. "Specific intent in this context would include a showing that defendants knowingly intended to deceive the Commission." *Algreg Cellular Engineering*, 12 FCC Rcd. 8148, 8175 (1997) citing, *In re Application of Fox Television Stations*, 10 FCC Rcd 8452, 8478 (1995). Although the record clearly shows that the Brashers intended for applications to be filed in the names of the Sumpters (including all persons with the last name of "Sumpter" and Jennifer Hill nee Sumpter) and others, what the evidence does not provide is any document or testimony that supports a conclusion that the Brashers knew that their actions were in violation of law. To the contrary, the uncontroverted record evidence shows that the Brashers believed that the Commission's Rules and policies allowed for the filing of applications in other persons' names. Since the record clearly shows that the Brashers' intention was to act in accord with Commission Rule or policy, then the Brashers lacked the requisite intent for a showing of wilful misrepresentation.

9. The Court's failure to recognize or apply the *pro se* status of the Brashers results in a conclusion that is unsupportable by the record. It is irrelevant whether a person with a more sophisticated knowledge of the agency's rules would have acted in a manner equal to the Brashers. It is only relevant as to whether those actions taken by the Brashers, with their unique knowledge and experience, support a finding of specific intent to deceive the Commission in the preparation and filing of the subject applications. Accordingly, the Court's failure to consider

and apply the *pro se* status of the Brashers is reversible error.

(B). Whether the Court erred in its find that the Defendants' motive in filing the subject applications evinces an intent to deceive.

10. The facts demonstrate that DLB was in need of additional T-band channels for the purpose of providing service to a large customer, which customer contracted to employ 600-800 mobile units upon the DLB system. Standing alone, this uncontroverted fact demonstrates that the Defendants' intent was not to engage in that practice known as spectrum warehousing, but rather to obtain spectrum for the purpose of constructing those channels and providing service, which practice fulfills the intention of the Commission's Rules.

11. Through a PCIA representative, Scott Fennell, the Brashers became aware that the Commission's rules and regulation at that time prevented DLB from acquiring more than one T-Band license at a time and that DLB could not apply for further licenses until such time as all channels on the first license(s) were constructed and fully loaded, *see*, 47 C.F.R. § 90.313(c) (Tr. 290-91, 585. *See*, Decision ¶ 15). Ron Brasher received verification of these rule restrictions via John Black, a spectrum licensing consultant. (Tr. 563) Ron Brasher admitted that he believed that such restriction existed and that his efforts were focused on a method to operate in view of this restriction.(Tr. 563) The record demonstrates that Ron Brasher did not seek professional assistance in the form of telecommunications counsel to assist him in dealing with the restriction under Section 90.313(c). Instead, Mr. Brasher relied on the comments of John Black and others that suggested that the restriction might be met by the filing of applications in others' names, which later licensed facilities would be managed by DLB.

12. The Defendants never disputed the Bureau's contentions regarding the reason behind filing the applications. In fact, it is only the Brashers' candid responses to Bureau inquiries that permit

the Bureau to support the contention. At all times relevant to the Bureau's investigation, the Brashers specifically stated that the licensing challenge of Section 90.313(c) is what led them to consider the filing of applications for facilities which would be held in the names of family members. The record is bereft of any misrepresented facts as to the purpose the applications and licenses might serve.

13. Although the Brashers stated consistently that their efforts were urged by the demand for substantial service from a large customer and the challenge of the Commission's Rules, the Brashers did not state that their actions were intended to deceive the Commission. Instead, the record shows only that the Brashers sought to exercise a different licensing option which they believed was available lawfully under the agency's rules and policies.

14. Although the Parties were motivated to obtain channels, this motivation, standing alone as it does, is insufficient to find lack of candor or misrepresentation because it contains a gap in logic and law necessary to demonstrate the Brashers' culpability. The desire for additional spectrum and actions taken to acquire additional spectrum are not, in the abstract, violations of Commission Rule. What the Bureau's evidence must show is that the desire was coupled with a specific intent to deceive the Commission and that the Defendants knowingly did so act with specific intent to deceive.² Ron Brasher avers that the Bureau did not meet this burden and that the Court's finding of this intent is in error.

15. The record shows that Ron Brasher, acting *pro se*, was advised by John Black that DLB

² Specific intent in this context would include a showing that defendants knowingly intended to deceive the Commission. *Algreg Cellular Engineering*, 12 FCC Rcd. 8148, 8175 (1997); citing, *In re Application of Fox Television Stations*, 10 FCC Rcd. 8452, 8478 (1995) ("*Fox Television Stations*").

could obtain multiple T-band channels by using different persons to file license applications and then combining the licenses into one system.³ Ron Brasher testified that Mr. Black informed him that this was a practice done throughout the industry.(Tr. 586. *see*, Decision ¶ 16) Ron Brasher researched this matter and discovered that four, third-party licensees had apparently structured their T-band systems employing licenses in the names of persons other than the primary licensee, i e employing managed facilities. (Tr 586-88. *See*, Decision ¶ 16) With this information, Ron Brasher reasonably believed that there existed an industry-accepted, legal means to meet his licensing challenge.⁴ Of great significance for the purpose of the Commission's review, in the Decision the Court find these facts to be true.

16. Accordingly, the Bureau's primary burden, to demonstrate that the Brashers acted with a specific intent to deceive the Commission regarding the Sumpter applications, was not met. All record evidence demonstrates fully that the Brashers believed that the method of licensing

³ Defendants respectfully note that in his deposition, John Black stated that he does know that people do manage facilities that are in other peoples' names. (Tr. 1734)

⁴ As further evidence of the Brashers' lack of intent to deceive the Commission, the Commission may examine the face of the applications in question.(EB Ex. 19) On each application the Commission will find control point information that provides the address and phone number for DLB/Metroplex. Ron Brasher testified at trial that this consistent provision of identical control point information on third parties' applications, either as an identical address or telephone number, is what alerted him to what other licensees in the Dallas area were doing. His simple review of the Commission's data base showed that other entities had acquired licenses employing third party names, but had listed their address and/or telephone number as the control point on the applications and, later, the licenses. (Tr. 567-71) Therefore, the Parties replicated what they believed to be an acceptable method of licensing and imbued all of the subject applications with an obvious commonality. Yet, the Court found that the Brashers intended to deceive the Commission with a method that places in plain view the common operation of the facilities. The conclusion that the Brashers intended to deceive the Commission in the filing of the subject applications is fully at odds with the Commission's own licensing records. One cannot place material information in plain view of the Commission and concurrently be found to have acted to hide that same information.

employed was lawful, fully reflective of industry practice, was recognized by the agency as acceptable, and was, therefore, not a deception.

17. The Parties aver that the Bureau did not meet its primary burden and the Court's Decision is at odds with established law which finds that "[a]n intent to deceive cannot coexist with an actual belief that an act is in compliance."⁵ Additionally, the Commission may note that *In re Applications of Rosemor Broadcasting*, 54 FCC 2d 394 ¶ 50 (1975), provides further illumination, finding that "persons acting under the belief that their efforts are proper will not be found to possess the specific intent to deceive the Commission." The record is fully silent regarding any alternative reason for the Defendants' actions, other than to engage in application practices which the Brashers believed to be lawful. Since the Court is bound by the record, the Decision cannot discount the uncontroverted evidence contained in the record by supplying an alternative theory. Accordingly, insofar as the Decision rests on a finding that an intent to deceive the Commission is a portion of the Brashers' actions in selecting the licensing method, that portion of the Decision is in clear error and must be reversed.

(C). Whether the Court erred in finding that the Defendants engaged in misrepresentation in their use of the Sumpters as licensees.

18. The Court's decision rests on its finding that the Sumpter testimony was entirely accurate and believable, however, this finding is at odds with the record evidence and thus, is in clear error. A fuller recitation of the issues regarding this matter are contained at Section I(C) Patricia Brasher's Exceptions filed in this matter, which recitation is incorporated herein.

(D). Whether the Court erred in its finding that the Brashers' use of O.C. Brasher's name was a misrepresentation or evinced a lack of candor.

19. For the Court to have found that the use of O.C. Brasher's name was either a

⁵ See, *Fox Television Stations*, 10 FCC Rcd. 8452, 8478 (1995)

misrepresentation or wilful lack of candor, the Court would need to apply the those standards articulated within *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1985)(“*Character Qualifications*”).⁶ From the statements of policy in *Character Qualifications* and related cases, it is clear that the Commission recognizes the element of intent is key to whether a licensee has lacked candor before the Commission or whether a misrepresentation is actionable. “A finding of lack of candor therefore requires a showing that relevant information has been withheld; that the party in question knew the information was relevant, and that it intended to withhold that information.” *Algreg Cellular Engineering*, 12 FCC Rcd. 8148, 8175 (1997) citing, *In re Application of Fox Television Stations*, 10 FCC Rcd. 8452, 8478 (1995) (hereinafter, “*Fox Television Stations*”).

20. In light of the foregoing, it is clear that to establish its case, the Bureau was required to show by a preponderance of the evidence that the Defendants (1) withheld relevant information from the Commission or the Enforcement Bureau, (2) knew the information was relevant, and (3) that the information was withheld intentionally, with the specific intent being to deceive the Commission. Ron Brasher contends that the Bureau fell far short of the showing required under *Character Qualifications* and the cases interpreting *Character Qualifications*. To establish that the Defendants lacked necessary candor before the Commission or misrepresented facts to the Commission, it was not enough for the Bureau to have shown that information ordinarily supplied to the Commission was not provided; the Bureau was required to show that the

⁶ The policies announced in 1985 in *Character Qualifications* were extended to all licensed services and license proceedings in 1990. See *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd. 3252 (1990)(made the tenets of *Character Policy I* applicable to all license proceedings, not just broadcast).

Defendants knew such information was relevant and that it was intentionally withheld. The Bureau failed to provide any showing that the Defendants were aware that the information they did not provide to the Commission was relevant or that the Brashers withheld such information with the specific intent to deceive the Commission. Absent any such evidence on the record, the Court could not have found that these necessary elements were present and, thus, the Court erred in its Decision.

21. Despite the Bureau's failure to present evidence relevant to the second element of the above three prong test, knowledge, the Decision finds the Defendants culpable. That the Decision does not address the issue of knowledge is reversible error. The Court is held to a standard of reasoned decision making arising out of proper application of law and fact. The law states that facts must be shown which support a finding that a defendant had knowledge sufficient to form an intent to deceive based on that knowledge. Yet, rather than rule on the matter based on the record evidence, the Court relies wholly on inference that is not supported by record evidence. Thus, instead of exploring the Brashers' knowledge, the Court found instead that the Brashers had a "strong motivation for their misrepresentation . . . [thus] intent to deceive may be inferred" Decision at 40, ¶151 . Since the motive to which the Court refers is common among all commercial licensees, i.e. to obtain sufficient spectrum to serve customers, then this motive alone cannot create an inference of wrongdoing. Nor can the fact that the Defendants faced a challenge arising under the Commission's Rules. All applicants and licensees face the limitations of the agency's rules. Accordingly, since the motive does not support deceit, the Court's finding is in error.

22. It is clear from the record that the Brashers lacked any knowledge of the Commission rules

that were allegedly violated. The record shows that Ron believed his execution of the O.C. application was fully authorized either by the Durable Power of Attorney or by his status as executor of his father's estate.(Tr. 451, 579-588, Deposition of Ron Brasher) Despite the absence of proof in the record regarding the Brashers' knowledge that certain information might have been needed to be provided to the Commission, the Court found that the Brashers had lacked candor before the Commission. The Court's finding is made despite more than ample evidence that shows the Defendants' actions are inconsistent with an intent to deceive the Commission. That the Court relied entirely on its motive = intent formula to reach an unsupported conclusion is material error.

23. It is undisputed that O.C. Brasher was dead at the time Ron Brasher filed an application on O.C.'s behalf, and that the application executed for O.C. Brasher replaced an earlier filed, but dismissed application, which O.C. Brasher executed prior to his death.(Tr. 580) As this is undisputed, it is important to determine whether Ron believed he was entitled to file an application on behalf of his late father. If it is established that Ron believed that he was fully authorized and entitled to file an application on behalf of O.C. Brasher or his estate, then it is beyond argument that Ron did not *knowingly* withhold information from the Commission or, of equal importance, intend to deceive the Commission.

24. The facts and circumstances relating to the second O.C. Brasher application show that Ron Brasher believed he was acting either under a Durable Power of Attorney or on behalf of the estate of his father, O.C. Brasher. (Tr. 451, 579-588) Ron testified that he believed an earlier cancelled application was part of his father's estate and that he did nothing more than re-file that application. (Tr. 580-581). As O.C. was dead at the time of the filing of the second application,

Ron's understanding of his authority to file an application in accord with the powers vested in him by the Durable Power of Attorney or as an executor of O.C.'s estate are probative as to a finding of whether Ron intended to mislead the Commission. Despite the fact that the undisputed testimony of Ron shows that he believed he was empowered to file applications on behalf of O.C. Brasher, the Court fails to address what affect this belief has on the inquiry into lack of candor or misrepresentation. As the Bureau failed to rebut Ron's statements that he believed his actions were in accord with the powers vested in him as an executor or under the Durable Power of Attorney executed by his father, O.C., it was incumbent upon the Court to conclude that Ron actually believed his actions were authorized.

25. It is of no importance or relevance whether a sophisticated person or a person with greater knowledge of law or procedure might reasonably believe that Ron's actions are appropriate. The Court must take Ron Brasher as it finds him. It was unreasonable for the Court to base its findings on assumptions of Ron's of knowledge which he did not possess. As the record shows, Ron Brasher possessed limited knowledge regarding the law, limited knowledge regarding the effect of the Durable Power of Attorney, and limited knowledge regarding the requirements of the Commission. Accordingly, the Court's finding improperly changes the nature of Ron Brasher by assuming sophistication and knowledge which is not evident on the record, thus, the Court's ruling is improperly predicated on that unsupported level of knowledge and sophistication.

26. As it is clear from the Commission's rules that an executor, as a person legally qualified to succeed to the interests of the deceased licensee, can hold an FCC license, 47 C.F.R. § 1.948(g), it is problematic that the Decision ignores the impact of Ron's statement that he believed he was empowered to apply for a license on behalf of his father or his father's estate. It

is decisionally significant that Ron felt he was authorized to apply for a license in the name of O.C. Brasher. For, since Ron believed that he was vested with the authority to apply for a license on behalf of O.C., then Ron's action cannot be deemed to have evinced a lack of candor or a misrepresentation; and since Ron reasonably believed that as executor he was empowered to act on behalf of O.C.'s estate, his only error was failing to properly identify the licensee as Estate of O.C. Brasher.

27. As shown below, Ron Brasher was actually entitled, under Texas law, to act on behalf of the estate during the four year statutory period in which he was entitled to delay the formal probating of his father's estate, therefore, the only problem with the application that Ron submitted on O.C.'s behalf was that it failed to properly identify the applicant as the estate of O.C. Brasher. This type of error is more akin to inaccurately referencing the type of entity applying for a license (a corporation rather than a limited liability company for instance). While this type of error would need to be corrected in order for the Commission's records to accurately reflect the status of the licensee, such an error represents neither a lack of candor before the Commission nor a misrepresentation, but rather, represents a simple mistake by an unsophisticated applicant

28. Upon review, the Commission may note that the Decision fails to give ample weight or consideration to the fact that on December 9, 1997 Ron signed his response to the Commission's November 17, 1997 800A letter (RB/PB Ex. 3) in such a manner as to identify the signatory as acting on behalf of O.C.'s estate. (Tr. at 654) While the Court notes that it is entitled to infer intent from motive, (Decision at ¶151) such an inference can only be reasonable if it takes into account evidence to the contrary and assigns appropriate weight to such statements. Despite

clear, record evidence to the contrary, the Decision states:

The record establishes, and it is concluded, that Ron, Patricia, and Metroplex concealed from the Commission for a period of nearly two years - from November 1997 to October 1999 - the fact that O.C. and Bearden were deceased. Further the disclosure of their death came only after Jim Sumpter had reported to the Commission that O.C. and Bearden were dead, and only after the WTB had specifically asked Ron and Patricia to state whether O.C. and Bearden were deceased. In other words, the disclosure came because Ron, Patricia and Metroplex could no longer hide the deaths from the Commission, and under circumstances in which they had no choice to disclose them.

Decision at ¶ 32. The Court found that Ron testified to the fact that his signature on the response to the 800A letter was not intended to constitute notice to the Commission that O.C. had died.

(Decision at ¶124 - 130 and fn. 14) This statement is misleading. At trial, Ron was asked “Is it your testimony that by substituting this particular form to the FCC that constituted notice *for all time* to the FCC that [O.C.] Brasher was deceased?” Tr. at 654-55 (emphasis added).

Undersigned counsel is unable to provide any clear or common sense definition of what “notice for all time” may mean and seriously doubts the Court’s ability to assign any plain meaning to the phrase. It is entirely possible that Ron did not understand what that phrase meant, or that he ascribed to it a meaning entirely different from that ascribed to it by the Court in its unsupported interpretation. What is clear is that Court failed to note the not-so-plain language of the question in its interpretation of the response. A questionable answer to a vague question is not appropriate for the Court’s improper use.

29. Contrary to the misleading statement in the Decision and the conclusion drawn therefrom, Ron’s signature on the 800A letter is irrefutable evidence that Ron revealed to the Commission in December 1997 that O.C. was dead and that Ron intended to provide notice to the Commission of the status of his father. The transcript shows that Judge Steinberg interrupted the

Bureau's questioning to clarify that Ron intended "EST," as entered on the 800A, to mean estate.(Tr. at 655) Remarkably, despite the Court's knowledge that the burden of proof was wholly on the Bureau to demonstrate that Ron's actions evinced a knowing intent to fail to provide candor to the Commission, the Court awarded no weight to the clear actions of Ron Brasher in his obvious intent to indicate on the 800A that he was acting on behalf of the estate when he wrote "O.C. Brasher EST R.D. Brasher" within the signature line of that form submitted to the licensing bureau; but gave overwhelming weight to Ron's response to a vague question that lacked any cognizable probative value. Regardless of whether Ron intended the 800A letter to constitute his notice "for all time" to the Commission of his father's death, he clearly intended to, and did, provide an executed document to the Commission that was intended to notify the Commission of O.C.'s status, dead. Ron's signature on the response to the 800A letter clearly conveyed the fact that he was acting in a representative capacity and removes entirely any plausible inference that he was attempting to deceive the Commission. The Court's finding of a contrary conclusion is at direct odds with the record evidence and must, therefore, be reversed on review.

30. Ron's method of notifying the Commission of O.C.'s demise is consistent with his unsophisticated, informal methods evidenced in all matters related to this proceeding. However, the Commission may further note that although the Commission's rules require the provision of notice to the Commission of a licensee's death and assignment of the decedent's license. 47 C.F.R. §1.948(g), Ron's actions were not violative of that rule. Ron's consistently delivered testimony, which was fully supported by the record evidence, has been that he applied for the license in a representative capacity. (Tr. 451, 579-88) Ron believed he was empowered to apply

for the license either under the Durable Power of Attorney executed by his father or in his capacity as executor of his father's estate. (Tr. 451, 579-88) Thus, Ron believed that the license was the property of the estate of O.C., not O.C. himself. In accord with Ron's sincere belief that the license was issued to the estate of O.C. and not to O.C. himself, and as O.C. was dead before the issuance of the license, Ron was not compelled to notify the Commission of O.C.'s death in accord with a strict reading of Section 1 948(g). Ron's administrative error was his failure to properly indicate that the applicant was the Estate of O.C. Brasher.

31. Thus, to find that the Bureau had met its burden, the Court must find record evidence that supports a finding of concealment and deceit related to the O.C. Brasher license. The Bureau did not create such a record upon which the Court might rely. Ron's method of executing the subject 800A does not support such a finding and, in fact, demonstrates that based on a preponderance of the record evidence, the Court should have found that no intended deception could be found.

The Court's failure to weigh properly the record evidence is reversible error.

(E). The Court erred in finding that the Defendants' actions related to the Ruth Bearden license warrant disqualification.

32. The Brashers have not contended during any portion of this proceeding that Ron's actions related to the Ruth Bearden application were entirely honorable. As the record shows, the application was prepared to assist another family member, Ron's uncle. (Tr. 173-175) However, the application was signed in the name of Ruth Bearden in accord with Ron's status as the executor of his mother's estate. (Tr. 451 and Deposition of Ron Brasher) And Ron caused the application to be sent to PCIA for required coordination. In having the application prepared and sent to PCIA, the record evidence demonstrates that Ron Brasher's actions were not in accord with the dictates for Commission applicants.

33. Ron Brasher was fully forthcoming at deposition and trial in his description of the way that he employed his late mother's name for the express purpose of having an application prepared and sent to PCIA with an intent that the application create a license for the operation of ten mobile units to be employed by Ed Bearden. (Tr. 173-175) And although Ron Brasher suggested that his authority to so act might also be found to have arisen out of his authority as executor of his mother's estate, (Tr. 451) in fact, Ron Brasher's statements attest to his belief that his efforts in causing the application to be prepared were likely outside the standards of conduct for a Commission licensee. The only conclusion that the Court might reasonably make, therefore, is that Ron Brasher consistently testified that his causing the application to be prepared was wrong, unfortunate, and should not have happened. Such testimony demonstrates remorse, not lack of candor. To the contrary, the testimony shows a willingness of Ron Brasher to offer into evidence the full truth of the matter, even when the truth is not beneficial to him personally.

34. Having given a full explanation of the matter, including those portions which do not place his actions in a favorable light, the Court is left with the task of what effect this act should have on determining the fate of the Brashers. In making its determination, it is material that Ron Brasher did not intend to personally benefit from his actions and, in fact, that he took all reasonable steps to cause the application to not be submitted to the Commission in the first instance. (Tr. 180-185) Ron Brasher informed PCIA that the application coordination process should be fully halted and he believed that PCIA would so act to effectively kill off the application. (Tr. 180-185) PCIA failed to heed Ron Brasher's instructions and the application was submitted and allowed to be processed to grant. However, Ron Brasher's efforts to mitigate the original errant behavior is material to the determination of what effect those actions taken

many years ago should have on the Court's decision. It is significant that Ron Brasher never constructed the facility licensed under his late mother's name. (Tr. 116) Since the Brashers consistently constructed all facilities which they licensed in their names or DLB, (Tr. 115-116) the fact that the subject facility was not constructed evidences that Ron Brasher did not intend to abuse the agency's processes beyond the date upon which he instructed PCIA to kill the application. Stated another way, his original actions were intended to be thwarted by his further actions, thereby curing before any harm was visited upon the agency's processes by the original act. Thus, Ron Brasher did not evidence a specific intent to deceive the Commission with the application which he believed had been made void. Any contrary conclusion by the Court is overreaching or in error.

(F). Whether the Court erred in its finding that the Defendants misrepresented facts in its Opposition to the Net Wave Petition.

35. The Court's finding is at odds with the record evidence and the plain language of Defendant's responses, thus it is in error. A fuller recitation of the facts and law related to this issue are contained at Section I(F) of DLB Enterprises, Inc. Exceptions filed in this matter, which recitation is incorporated herein.

(G). Whether the Court erred in its finding that the Brashers misrepresented facts regarding the Sumpters's applications and licenses during the investigation and hearing on this matter.

36. The Court's finding that the Sumpter testimony was "forthright, candid, and entirely believable," Decision at ¶148, was in error and its finding regarding the Defendants reflected that error. A fuller recitation of this issue is contained at Section I(G) of the Exceptions of DLB Enterprises, Inc. filed in this matter which recitation is incorporated herein.

(H). The Court erred in finding that the Brashers had engaged in misrepresentation or lack of candor in the investigation and hearing related to the license issued in the name of O.C. Brasher.

37. Ron's response to the Wireless Telecommunications Bureau (WTB) 800A letter, *see*,

Section I(D) above, was not the only time the Ron indicated to the Commission that he was acting in a representative capacity regarding the license of O.C. Ron provided such information to the Wireless Telecommunications Bureau (“WTB”) in his response to the WTB’s November 9, 1998 letter of inquiry. The Decision fails to reach certain key elements of that response, however. The WTB’s inquiry demanded that Ron provide “A list of stations which Ron D. Brasher is managing for these individuals and entities.”(EB Ex. 16 at 2) The question did not extend to an inquiry regarding the status of the licensees, i.e. bankrupt, deceased, out of business, etc. and the question was not open-ended, indicating that the WTB sought any information other than that requested. Ron answered the question that was asked.

38. Since Ron believed by his earlier execution and associated information placed on the 800A that he had previously notified the WTB of his father’s condition, (RB/PB Ex. 3) his response cannot be found to have been intended to conceal a fact which he believed he had already fully revealed to the Commission. Thus, Ron Brasher avers that the reply to the November 9th letter was fully responsive and provided all information that was sought. That the Brashers did not provide more information than that which was requested cannot be found to be improper. The Court’s finding to the contrary is, therefore, unsupported by the record evidence and is in clear error.

39. That the Court erred is further illustrated by the fact that the Decision misquotes Ron’s response to the November 9th inquiry. The Court states the following regarding Ron’s December 7, 1998 response: “Nowhere in his letter did Ron disclose the fact that O.C. Brasher and Bearden were dead (*id.*), although the response listed O.C. as a “Licensee” of one of the ‘Managed Stations’ (*id.* at 3). (Decision at 20, ¶ 75) This statement materially misquotes Ron’s December

7, 1998 response. Ron's response to the December 7 inquiry listed the licensee as "O.C. Brasher/Ron D. Brasher." As is clear from the response, Ron indicated that he was functioning in a representative capacity in relation to O.C.'s license. That Ron did not use the words 'executor' or 'estate' in his response does not provide evidence of an intent to conceal whether O.C. was alive, particularly in view of the earlier disclosure on the 800A. To the contrary, had Ron wished to conceal O.C.'s death, he would not have listed his name with O.C.'s as the licensee. Accordingly, the Court's misquoting of the true manner of Ron's response to the subject inquiry letter demonstrates that the Court was improperly applying the record evidence.

40. Ron Brasher was, thus, not on reasonable notice that the WTB was unaware of O.C.'s death. He had informed the WTB in the 800A and his response in December, 1998 was fully consistent with his earlier effort to notify the WTB. Only after the WTB sent its September 9, 1999 inquiry did Ron Brasher recognize that the WTB might not know that O.C. was deceased. Certainly there was no indication that the WTB did not understand O.C.'s status and the WTB did not make specific inquiry until September, 1999. Upon the WTB's inquiry of 9/99, Ron provided a truthful answer to the issue. The Court's finding that the WTB did not discover that O.C. was dead until Jim Sumpter informed them of O.C.'s status (Decision at 32, ¶119) is, thus, based on a convoluted set of facts that is fully contradicted by the record evidence. If so, the WTB simply did not read its own licensing records and did not ask Ron a simple question regarding the plain language on the 800A. A person cannot be found to have lacked candor when the person reasonably believed and the record demonstrates that the material information which is alleged to have not been provided, was not asked for and was already presented to the inquiring Bureau. Accordingly, the Commission must find on review that the Court's finding

related to the Parties' candor in informing the WTB of O.C.'s death is contrary to the record and must be reversed.

(I). Whether the Court erred in finding that the Defendants lacked candor in their participation with the Bureau's investigation and the hearing.

41. The Court erred by failing to base its finding on record evidence which fully contradicts the findings within the Decision. A fuller recitation of this issue is contained at Section I(I) of the Exceptions of DLB Enterprises, Inc. filed in this matter which recitation is incorporated herein

II. Real Party-in-Interest/Unauthorized Transfer of Control/Abuse of Process: Issues (b) and (c): Whether the Court erred in finding that Defendants had abused the Commission's Processes via violations of the real party-in-interest standards and rules against unauthorized transfers of control.

(A). Whether the Court erred in finding that Defendants had engaged in abuse of the Commission's processes.

42. The Court erred in failing to apply relevant law to the record facts of this matter. A fuller recitation of this issue is contained at Section II(A) of the Exceptions of DLB Enterprises, Inc. filed in this matter which recitation is incorporated herein

(B). Whether the Court erred in finding that an unauthorized transfer of control or violation of the real party-in-interest rules had occurred.

43. The Court erred in not taking into account the specific facts on the record and in applying an incorrect legal standard. A fuller recitation of this issue is contained at Section II(B) of the Exceptions of DLB Enterprises, Inc. filed in this matter which recitation is incorporated herein

III. Whether the Court erred in its disqualification of the Brashers and DLB.

44. The record does not support the result of the Court's ruling. Based on a "he said, she said" case, in which the Court wrongly awarded full and undeserved credulity to the Sumpters and, thus, damned the Brashers on every point, issue, element of fact, document, application, license, and recollection, the Court builds for itself a justification for disqualification which is not supported by the record evidence. As shown herein, the record evidence does not support

misrepresentation absent the Court's unsupported leaps of logic. Certainly, no reading of the record could support a finding that the Bureau even came close to carrying its burden of proof. Even the testimony of the Bureau's expert witness, when found inconvenient regarding the genuineness of the Sumpter signatures on the client copies was tossed overboard due to an irrelevant finding that the dates on two of the client copies were *mechanically reproduced*, see, Exceptions of Patricia Brasher at ¶ 33.

45. Given an unbiased reading, the record does not support a finding of misrepresentation, lack of candor, or abuse of process; the three potential bases for disqualification. Rather, the record demonstrates fully that an unsophisticated person, Ron Brasher, believed that his actions were lawful and did nothing to conceal the methods he chose to obtain additional channels for DLB. Each of the applications clearly showed commonality. He executed the 800A for the O.C. Brasher Estate license by indicating that the license was to be held in the estate. The Defendants responded fully and honestly to each of the WTB's inquiries, provided thousands of copies of documents pursuant to discovery, participated openly in the discovery process, and answered with great effort an enormous amount of questions at hearing, even when the answers were known to be unhelpful to their case.

46. The Defendants do not contend that their actions were entirely appropriate or that the manner by which they chose to license facilities was in strict accord with the agency's rules and policies. Errors of administrative nature, assumptions regarding acceptable licensing methods, failure to reduce to writing management agreements, etc. thread throughout the history of this matter. However, despite the errors and omissions of their actions, Ron Brasher respectfully requests that the Commission look carefully at the record evidence and compare it with the

findings within the Decision. He is confident that the Commission will not find that the uncontroverted facts and application of relevant law present in this matter justify the complete economic ruin of two persons in their seventies, probably causing them to lose everything except their home. Decision at ¶109.

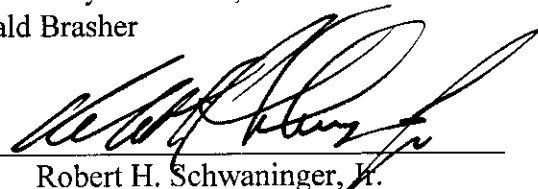
47. If a negotiated settlement is found to be advisable, the Defendants have always stated their willingness to discuss such an outcome, even if it means that Ron and Pat must exit forever the business. However, to ruin DLB and to effectively shut off its system, would place persons out of work, would create economic waste in the end users and customers, and would create ancillary harm in the millions of dollars. The Bureau's case and the uncontested facts of this matter do not justify this extreme outcome.

Conclusion

48. For the reasons shown herein and for good cause shown, Ron Brasher respectfully requests that the Court's Decision be reversed on review or modified to allow the Defendants to pay a forfeiture commensurate with factually supported findings of fact and conclusions of law.

Respectfully submitted,
Ronald Brasher

By



Robert H. Schwaninger, Jr.
Benjamin J. Aron
Garret Hargrave

Dated: September 8, 2003

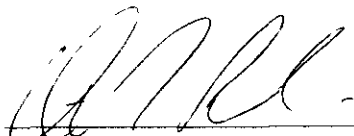
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a copy of the foregoing Exceptions was served by hand delivery/courier to the below listed parties on this 8th day September, 2003.

Hon. Arthur I Steinberg
Administrative Law Judge
Federal Communications Commission
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Mr. William Knowles-Kellett, Esq.
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